

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/04-02/06  
Date: 9 February 2016

**TRIAL CHAMBER VI**

**Before:** Judge Robert Fremr, Presiding Judge  
Judge Kuniko Ozaki  
Judge Chang-ho Chung

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. BOSCO NTAGANDA***

**Public**

**Decision on Defence preliminary challenges to Prosecution's expert witnesses**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Ms Nicole Samson

**Counsel for Bosco Ntaganda**

Mr Stéphane Bourgon  
Mr Luc Boutin

**Legal Representatives of Victims**

Ms Sarah Pellet  
Mr Dmytro Suprun

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Trial Chamber VI** ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Bosco Ntaganda*, having regard to Articles 64 and 69 of the Rome Statute ('Statute') and Regulation 44 of the Regulations of the Court, issues this 'Decision on Defence preliminary challenges to Prosecution's expert witnesses'.

### **I. Procedural history**

1. On 16 April 2015, the Office of the Prosecutor ('Prosecution') filed a list of expert witnesses it intends to call to testify.<sup>1</sup>
2. On 2 June 2015, the Chamber invited the defence team for Mr Ntaganda ('Defence') to file a notice indicating whether, for all expert witnesses the Prosecution intends to call, it: i) accepts the reports as being experts' reports; ii) wishes to cross-examine the proposed expert witnesses; and/or iii) challenges the qualifications of the witnesses as an expert, or the relevance of all, or parts, of the report; and, if so, to indicate which parts.<sup>2</sup>
3. On 15 September 2015,<sup>3</sup> the Defence filed a notice setting out its position in respect of the Prosecution's thirteen proposed expert witnesses ('Defence Notice').<sup>4</sup> The Defence indicated that, *inter alia*, it objected to P-0932, P-0885, P-0453 and P-0938 ('Contested Experts') being called to provide evidence as expert witnesses, whether orally or in writing, and it sought the Chamber's guidance as to when and how to formally raise its objections.<sup>5</sup> It also indicated

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<sup>1</sup> Prosecution's list of expert witnesses and request pursuant to regulation 35 to vary the time limit for disclosure of the report of one expert witness, ICC-01/04-02/06-560.

<sup>2</sup> Decision on the conduct of the proceedings, ICC-01/04-02/06-619, para. 38.

<sup>3</sup> The Chamber granted an extension of time to file the Defence's notice by e-mail to the parties on 13 August 2015 at 8:52.

<sup>4</sup> Notice on behalf of Mr Ntaganda setting out the position of the Defence on proposed Prosecution expert witnesses, ICC-01/04-02/06-826-Conf. A public redacted version (ICC-01/04-02/06-826-Red) was filed on the same day.

<sup>5</sup> Defence Notice, ICC-01/04-02/06-826-Red, paras 9, 14, 18, and 26.

that it was unable to provide notice of its position on Witness P-0945 as no relevant information on his background and qualifications had been provided.<sup>6</sup>

4. On 10 November 2015, the Chamber directed the Defence to supplement its submissions in relation to the Contested Experts and their reports, addressing in particular: i) the Contested Experts' qualifications and expertise in relation to the relevant subject matter; ii) whether the proposed areas to be addressed properly fall within the scope of expert testimony; and iii) the Contested Experts' impartiality and relevance of their proposed testimony.<sup>7</sup>
5. In addition, noting that P-0945's *curriculum vitae* had in the meantime been disclosed, the Chamber directed the Defence to indicate whether it: i) accepts the report produced by P-0945 as being an expert report; ii) wishes to cross-examine P-0945; and/or iii) challenges the qualifications of P-0945 as an expert, or the relevance of all, or parts of his report.<sup>8</sup>
6. Pursuant to the Chamber's order,<sup>9</sup> the Defence submitted its supplementary submissions on 23 November 2015,<sup>10</sup> the Prosecution filed its response on 2 December 2015,<sup>11</sup> and the Defence filed its reply on 8 December 2015.<sup>12</sup>

## II. Applicable law

7. The Chamber considers an expert witness to be a person who, by virtue of some specialised knowledge, skill or training can assist the Chamber in understanding or determining an issue of a technical nature that is in dispute.<sup>13</sup>

<sup>6</sup> Defence Notice, ICC-01/04-02/06-826-Red, paras 56-57.

<sup>7</sup> Order requesting parties' submissions on expert witnesses, notified on 11 November 2015, ICC-01/04-02/06-994 ('Order Requesting Parties' Submissions'), para. 9.

<sup>8</sup> Order Requesting Parties' Submissions, ICC-01/04-02/06-994, para. 10.

<sup>9</sup> Order Requesting Parties' Submissions, ICC-01/04-02/06-994, page 6.

<sup>10</sup> Supplementary submission on behalf of Mr Ntaganda in relation to proposed Expert witnesses, ICC-01/04-02/06-1032-Conf ('Supplementary Submissions').

<sup>11</sup> Prosecution's response to "Supplementary submission on behalf of Mr Ntaganda in relation to proposed Expert witnesses", ICC-01/04-02/06-1032-Conf, 2 December 2015, ICC-01/04-02/06-1044-Conf ('Response').

<sup>12</sup> Reply on behalf of Mr Ntaganda to "Prosecution's response to 'Supplementary submission on behalf of Mr Ntaganda in relation to proposed Expert witnesses', ICC-01/04-02/06-1032-Conf", 8 December 2015, ICC-01/04-02/06-1046-Conf ('Reply').

8. When determining the admissibility of an expert report or testimony, the Chamber considers that it must: i) be satisfied that the proposed witness is an expert; ii) make a determination as to whether testimony in the relevant subject area of expertise would be of assistance; and iii) determine that the content of the report and/or anticipated testimony falls within the expertise of the witness.<sup>14</sup> Moreover, the content of the proposed expert report or testimony must not usurp the functions of the Chamber as the ultimate arbiter of fact and law.<sup>15</sup> The Chamber may entertain certain objections to the admissibility of expert evidence prior to formal submission when doing so would ensure a fair and expeditious trial.<sup>16</sup>
9. Expert witnesses are ordinarily afforded wide latitude to offer opinions within their expertise and their views need not be based upon first-hand knowledge or experience.<sup>17</sup> It is, however, for the Chamber to assess whether the witness has sufficient expertise in a relevant subject area such that the Chamber may benefit from hearing his or her opinion.<sup>18</sup> At all times, the expert is obliged to testify with the utmost neutrality and objectivity.<sup>19</sup>
10. Finally, the Chamber recalls that it will determine the admissibility of evidence, in accordance with Articles 64(9)(a) and 69(4) of the Statute, by assessing its relevance, probative value, and any prejudice that its admission may cause to a

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<sup>13</sup> See also, for example, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, 7 August 2013, ICC-01/09-01/11-844 ('*Ruto and Sang* Decision on Expert Witness'), para. 11; ICTY, *Prosecutor v. Vujadin Popović et al.*, IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning Status of Richard Butler as an Expert Witness, 30 January 2008 ('*Popović* Appeals Chamber Decision on Richard Butler'), para. 27; *Prosecutor v. Ratko Mladić*, IT-09-92-T, Decision on Defence Request to Disqualify Richard Butler as an Expert and Bar the Prosecution from Presenting his Reports, 19 October 2012 ('*Mladić* Decision on Expert Witness'), para. 8.

<sup>14</sup> See *Ruto and Sang* Decision on Expert Witness, ICC-01/09-01/11-844, para. 12. See also, ICTY, *Popović* Appeals Chamber Decision on Richard Butler, para. 27; *Mladić* Decision on Expert Witness, para. 8.

<sup>15</sup> *Ruto and Sang* Decision on Expert Witness, ICC-01/09-01/11-844, para. 12.

<sup>16</sup> *Ruto and Sang* Decision on Expert Witness, ICC-01/09-01/11-844, para. 15.

<sup>17</sup> See also, ICTY, *Popović* Appeals Chamber Decision on Richard Butler, para. 27; ICTR, *Laurent Semanza v. The Prosecutor*, ICTR-97-20-A, Appeal Judgement, 20 May 2005, para. 303.

<sup>18</sup> See also, ICTY, *Prosecutor v. Vujadin Popović et al.*, IT-05-88-T, Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas ('*Popović* Decision on Professor Schabas Expert Report'), 1 July 2008, para. 7.

<sup>19</sup> See for example, ICTY, *Mladić* Decision on Expert Witness, para. 9, making reference to *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-A, Appeals Judgment, 28 November 2007, para. 199.

fair trial or to the evaluation of the testimony of a witness, at the time of submission to the Chamber.<sup>20</sup> The Chamber therefore will not consider the probative value of the expert reports, or lack thereof, at this stage, and notes that the parties will have an opportunity to make any relevant submissions in that regard in due course.<sup>21</sup>

### III. Submissions and analysis

11. The Chamber notes that the Defence does not challenge P-0945's qualifications, or the relevance of his report.<sup>22</sup>
12. In the present decision, the Chamber will confine its consideration to the submissions of the parties concerning the Contested Experts.

#### *i. P-0932*

13. The Defence challenges P-0932's qualifications and expertise in relation to the relevant subject matter.<sup>23</sup> In particular, it submits that P-0932 does not demonstrate any scientific knowledge and expertise relevant to the administrative, cultural and social aspects of life in Ituri, specifically.<sup>24</sup> The Defence submits that addressing the expert's qualifications at this stage assists the efficient conduct of the proceedings by ensuring that only qualified experts appear before the Court.<sup>25</sup> In light of the proposed expert's apparent lack of specific expertise regarding the relevant subject matter, the Defence submits that such expert evidence is of marginal probative value.<sup>26</sup> Finally, the Defence expresses 'serious concerns' with regard to the relevance of P-0932's report, primarily by reference to the report's failure to address certain questions posed

<sup>20</sup> Decision on the conduct of proceedings, ICC-01/04-02/06-619, paras 36-37.

<sup>21</sup> See also, Order Requesting Parties' Submissions, ICC-01/04-02/06-994, para. 7.

<sup>22</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 58-60.

<sup>23</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 6-10.

<sup>24</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 7-9. See also Reply, ICC-01/04-02/06-1046-Conf, paras 6-7.

<sup>25</sup> Reply, ICC-01/04-02/06-1046-Conf, para. 8.

<sup>26</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 11-12.

by the Prosecution, and its lack of structure, methodology and references to sources.<sup>27</sup>

14. The Prosecution submits that P-0932 is qualified to provide the anticipated testimony because of his long experience in the field of '*histoire de mentalités*' of social and cultural groups in the DRC.<sup>28</sup> The Prosecution further notes that the Defence will have an opportunity to question P-0932 on his credentials and about the extent to which his knowledge also extends to Ituri during cross-examination.<sup>29</sup> Concerning the Defence's challenges to the relevance of the proposed report, the Prosecution submits that the questions put to P-0932 in its letter of instruction were meant to inform the expertise provided rather than to elicit specific answers to each of them and that the level of detail in which P-0932 answered the questions is not conclusive as to the relevance of his proposed testimony.<sup>30</sup> It is further submitted that the referencing and methodology in the report would at most affect the weight to be accorded to it.<sup>31</sup>
15. The Chamber notes that P-0932's *curriculum vitae* indicates that he appears to have long experience as a historian on matters related to Africa, including dealing with the *histoire des mentalités* of social and cultural groups in the DRC.<sup>32</sup> With regard to the Defence's objection that the proposed expert does not have direct knowledge and experience relating to Ituri, the Chamber first recalls that the views of an expert need not be based on first-hand knowledge.<sup>33</sup> The Chamber further notes that P-0932 appears to have engaged in academic research, and acted as a consultant, on matters related to naming and social

<sup>27</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 13-17; Reply, ICC-01/04-02/06-1046-Conf, paras 10-13.

<sup>28</sup> Response, ICC-01/04-02/06-1044-Conf, para. 10.

<sup>29</sup> Response, ICC-01/04-02/06-1044-Conf, para. 11.

<sup>30</sup> Response, ICC-01/04-02/06-1044-Conf, para. 12.

<sup>31</sup> Response, ICC-01/04-02/06-1044-Conf, para. 14.

<sup>32</sup> DRC-OTP-2083-0513. See also, Response, ICC-01/04-02/06-1044-Conf, para. 10.

<sup>33</sup> See *supra*, para. 9.

conventions in the DRC.<sup>34</sup> In light of his qualifications, in particular as reflected in his *curriculum vitae*, the Chamber considers that P-0932 appears to possess some specialised knowledge on the proposed area of testimony. The Chamber is therefore satisfied that P-0932 can be accepted as an expert, who can assist the Chamber on matters related, *inter alia*, to registration of civil status, naming conventions, family structures, and dates of birth.<sup>35</sup>

16. The Chamber notes that the report, which is comprised of two documents, deals with naming and other social conventions in Ituri, and provides a description of certain aspects of the administrative, cultural and social life in Ituri.<sup>36</sup> By virtue of its subject matter, the report appears *prima facie* relevant. The Chamber considers that any issues surrounding the sources used, or the referencing, structure or methodology of the report, are matters that can be addressed during cross-examination and taken into consideration in evaluating the weight of the report, should it be admitted.
17. For the reasons above, the Chamber finds that P-0932 may be called to testify as an expert witness.

*ii. P-0885*

18. The Defence does not challenge P-0885's qualifications and expertise in relation to the subject matters of child soldiers and sexual violence against women in the context of an armed conflict, nor that the proposed areas to be addressed by P-0885 fall within the scope of expert testimony.<sup>37</sup> The Defence posits that the proposed expert improperly addressed these topics, departing significantly from the instructions given by the Prosecution. In particular, the Defence submits that, by providing a legal opinion on certain elements of the crimes

<sup>34</sup> DRC-OTP-2083-0513, see in particular pages 1 and 3; DRC-OTP-2083-0539; see also, Response, ICC-01/04-02/06-1044-Conf, para. 10.

<sup>35</sup> DRC-OTP-2083-0517 and DRC-OTP-2083-0524.

<sup>36</sup> DRC-OTP-2083-0517 and DRC-OTP-2083-0524.

<sup>37</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 19-20.



charged, P-0885's proposed evidence goes beyond the scope of admissible expertise before the Court. The Defence further submits that, even if the Chamber were in principle inclined to receive assistance from an expert on legal issues, the report fails to provide meaningful assistance on specific issues of a technical nature that are outside of the Chamber's experience and knowledge.<sup>38</sup>

19. The Defence additionally challenges both the impartiality and the relevance of the report. It submits, *inter alia*, that, although Trial Chamber I changed P-0885's status from *amicus curiae* to that of an expert witness, 'the gist of [...] P-0885's testimony is that of an *amicus curiae*'.<sup>39</sup> It further submits that P-0885 advocates for a particular interpretation of the provisions of the Statute related to child soldiers and adopts language that is at odds with the attitude of neutrality expected from any expert witness.<sup>40</sup> The Defence further claims that the proposed expert's general knowledge of child soldiers does not amount to 'expertise' which would assist the Chamber in understanding or determining any of the issues in dispute in the present case.<sup>41</sup> Finally, in the view of the Defence, P-0885's report does not follow any appropriate methodology.<sup>42</sup>
20. The Prosecution avers that there are no 'strict rules' preventing the Chamber from admitting an expert opinion on points of law. It further submits that the Defence fails to explain how P-0885's views on specific legal issues demonstrate her lack of impartiality *vis-à-vis* the accused, and that any such concerns can properly be addressed during cross-examination.<sup>43</sup> With regard to the relevance of the report, the Prosecution notes that in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I drew from P-0885's general evidence on the phenomenon of child soldiers to inform its own findings about the situation of

<sup>38</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 20-24.

<sup>39</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, para. 26.

<sup>40</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 25-27. See also Reply, ICC-01/04-02/06-1046-Conf, paras 9-17.

<sup>41</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 28-35.

<sup>42</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, para. 36.

<sup>43</sup> Response, ICC-01/04-02/06-1044-Conf, paras 16-18.

minors in the UPC/FPLC.<sup>44</sup> Lastly, it submits that any challenge to the report's methodology may, at best, be relevant to the weight of the evidence, rather than to its relevance.<sup>45</sup>

21. At the outset, the Chamber notes that it retains its discretion to evaluate a proposed expert witness's credentials despite the fact that the individual may have already testified as an expert in other cases.<sup>46</sup> The Chamber notes P-0885's role and work as United Nations Special Rapporteur on Violence against Women, from 1994 to 2003, and as United Nations Special Representative of the Secretary General on Children and Armed Conflict, from 2006 to 2012.<sup>47</sup> The report deals with a number of questions related to child soldiers (including the definition of 'conscripting or enlisting' children, and the interpretation of 'using them to participate actively in hostilities') as well as sexual violence, also in the context of armed conflict.<sup>48</sup> The Chamber notes however that in her report, the proposed expert mostly provides legal opinions on certain elements of the crimes charged.
22. In this respect, although the Chamber recognises P-0885's expertise in the subject matters in question, it considers that the proposed areas of testimony, so far as they relate to questions of law, fall within the Chamber's own competence, and are matters upon which the parties can make submissions at the relevant time.<sup>49</sup> Accordingly, the Chamber does not find it would be assisted by the proposed evidence. With regard to the remaining portions of the proposed report, the Chamber considers that the information appears to be of too general a nature to assist the Chamber in determining the concrete issues in

<sup>44</sup> Response, ICC-01/04-02/06-1044-Conf, para. 19.

<sup>45</sup> Response, ICC-01/04-02/06-1044-Conf, para. 21.

<sup>46</sup> See for example, ICTY, *Mladić* Decision on Expert Witness, para. 11, citing *Popović* Appeals Chamber Decision on Status of Richard Butler, footnote 88.

<sup>47</sup> DRC-OTP-2084-0073.

<sup>48</sup> DRC-OTP-2084-0062.

<sup>49</sup> See also, ICTY, *Popović* Decision on Professor Schabas Expert Report, paras 7-8.

dispute, bearing in mind the importance of ensuring the focus and efficiency of the proceedings.

23. In light of the above, the Chamber will not permit the Prosecution to call P-0885 as an expert witness, nor to tender her report into evidence.

*iii. P-0453*

24. The Defence submits that the report goes beyond the scope of admissible expert evidence and challenges its relevance primarily because: i) the data relied upon extends beyond the temporal scope of the charges and will 'inevitably lead to distorted and misleading conclusions'; and ii) P-0453 relies on sociological and medical concepts and human rights definitions of harms, which 'do not easily match international humanitarian law concepts which the Chamber is bound to apply'.<sup>50</sup> Finally, the Defence takes issue with P-0453's conclusions that the Lendu-Ngiti were more likely to suffer abuses perpetrated by the UPC/FPLC than other ethnic groups. The Defence submits that P-0453, basing her conclusions on data available to her as a result of a survey, infringed on the Chamber's exclusive fact-finding role.<sup>51</sup>
25. The Prosecution argues that data relating to the years immediately outside the timeframe of the charges would also be relevant to the present case. It is submitted that whether the data will be persuasive taken together with other evidence is a matter of weight not of relevance.<sup>52</sup> Regarding the use of certain terms and concepts in the report, the Prosecution indicates that the Defence will have an opportunity to explore their meaning during cross-examination.<sup>53</sup> Regarding the allegations of P-0453 infringing the Court's fact-finding role, the

<sup>50</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 40-46.

<sup>51</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, para. 49. See also, Reply, ICC-01/04-02/06-1046-Conf, paras 18-19.

<sup>52</sup> Response, ICC-01/04-02/06-1044-Conf, paras 23-25.

<sup>53</sup> Response, ICC-01/04-02/06-1044-Conf, para. 26.

Prosecution notes that the expert's conclusion is not based on the evidence presented in this case, and that even if P-0453 was offering an opinion on the ultimate issue, such opinions are allowed when the Chamber determines that they may be of assistance.<sup>54</sup>

26. The qualifications and expertise of P-0453, as reflected in her *curriculum vitae*,<sup>55</sup> are not challenged by the Defence,<sup>56</sup> and on the basis of the information contained therein, the Chamber is of the view that she appears to have sufficient credentials. The Chamber further notes that the report provides the proposed expert's analysis and conclusions on human rights violations committed by UPC/FPLC members in the Ituri district during the period 2000-2005,<sup>57</sup> and is therefore *prima facie* relevant. With regard to the Defence's objections, the Chamber notes that the report covers the period relevant to the charges, and that while the report extends to the years immediately outside this timeframe, the information related to these years may also be of relevance. In any event, any timeframe going beyond the temporal scope of the charges does not render the report irrelevant; it will be for the Chamber to determine the weight, if any, to give to the report, or parts thereof, in light of the evidence admitted in the present case, should it be admitted. With regard to the use of certain concepts and terms, the Chamber notes that this does not affect the relevance of the report, and that the parties would be able to seek any necessary clarification during the examination of the proposed expert. Neither does the Chamber consider that the proposed expert's testimony would impermissibly usurp the fact-finding functions of the Chamber, noting that her evidence would fall to be evaluated in the light of all other relevant information properly before the Chamber.

<sup>54</sup> Response, ICC-01/04-02/06-1044-Conf, para. 27.

<sup>55</sup> DRC-OTP-2080-0642.

<sup>56</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, para. 39.

<sup>57</sup> DRC-OTP-2084-0523.

27. For the reasons above, P-0453 may be called to testify as an expert witness.

*iv. P-0938*

28. The Defence argues that, by providing an opinion on the credibility of four Prosecution's witnesses, P-0938's conclusions exceed the terms of the expertise requested by the Prosecution and 'clearly infringe' on the Chamber's exclusive role to rule on the credibility of the witnesses who testify before it. For the same reasons, the Defence challenges the impartiality and relevance of the proposed testimony.<sup>58</sup>
29. The Prosecution notes that P-0938's reports address the questions raised in the Prosecution's letter of instruction and that the reports are relevant and fall squarely within the proposed expert's field of expertise. According to the Prosecution, P-0938's comments on credibility should not be taken out of context.<sup>59</sup> With regard to the challenge to P-0938's impartiality, the Prosecution submits that this is an area the Defence will have an opportunity to explore during cross-examination and that can eventually be considered when assessing the weight to be assigned to the expert's evidence.<sup>60</sup>
30. The Chamber notes that the Defence does not challenge P-0938's qualifications and expertise,<sup>61</sup> and the Chamber is satisfied, in light of the information contained in her *curriculum vitae*, that the proposed expert is an expert in the field of psychotherapy, in particular with regard to adult victims of rape and child sexual abuse.<sup>62</sup> In addition, the Chamber notes that P-0938's reports purport to provide an assessment on whether four Prosecution witnesses, allegedly victims of sexual and other violence during the events in Ituri in

<sup>58</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 54-56.

<sup>59</sup> Response, ICC-01/04-02/06-1044-Conf, para. 30.

<sup>60</sup> Response, ICC-01/04-02/06-1044-Conf, para. 31.

<sup>61</sup> Supplementary Submissions, ICC-01/04-02/06-1032-Conf, paras 52-53.

<sup>62</sup> DRC-OTP-2059-0049-R02, pages 2-3; DRC-OTP-2059-0058-R02, pages 2-3; DRC-OTP-2059-0069-R03, pages 2-3; DRC-OTP-2059-0080-R03, pages 2-3.

February 2003, exhibit psychological harm or consequences that are consistent with such events.<sup>63</sup> The report is therefore *prima facie* relevant.

31. However, the Chamber notes that the proposed expert indeed included in her reports, her opinion about the credibility of the witnesses. The Chamber will disregard any such conclusions, and indicates that P-0938's testimony should not encompass such issues, beyond the scope of whether, based on her experience, the witnesses' symptoms and responses are consistent with those of other persons who have experienced such events.
32. For the reasons above, P-0938 may be called to testify as an expert witness.

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<sup>63</sup> DRC-OTP-2059-0049-R02; DRC-OTP-2059-0058-R02; DRC-OTP-2059-0069-R03; DRC-OTP-2059-0080-R02.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

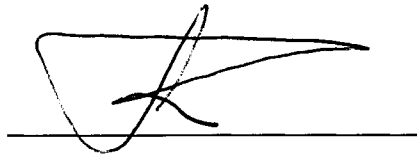
**DECIDES** that the Prosecution will not be permitted to call P-0885 as an expert witness or to tender her report into evidence as an expert report;

**DECIDES** that P-0932, P-0453 and P-0938 may testify as expert witnesses;

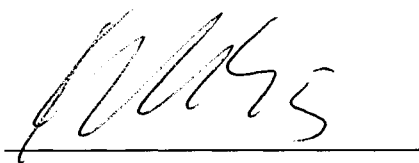
**DEFERS** consideration of the admissibility of the proposed expert reports or any specific sections thereto; and

**DIRECTS** the parties to file public redacted versions of their respective filings (ICC-01/04-02/06-1032-Conf; ICC-01/04-02/06-1044-Conf, and ICC-01/04-02/06-1046-Conf), by 19 February 2016.

Done in both English and French, the English version being authoritative.



**Judge Robert Fremr, Presiding Judge**



**Judge Kuniko Ozaki**



**Judge Chang-ho Chung**

Dated this 9 February 2016

At The Hague, The Netherlands